

ONE HUNDRED FOURTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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October 23, 2015

The Honorable Gene L. Dodaro
Comptroller General
U.S. Government Accountability Office
441 G Street, N.W.
Washington, DC 20548

Dear Mr. Dodaro:

This committee's concern with the openness, transparency, and fairness of the Federal Communications Commission's (FCC) process is well established and has led to multiple and varied inquiries into the management of the agency under multiple chairmen. These inquiries include, among other things, the monitoring of the FCC's backlog reduction efforts, the FCC's success in meeting bureau and office performance metrics, and more recently the Chairman's proposal to reduce the Enforcement Bureau's geographic footprint by closing more than half of the Bureau's field offices.

The information submitted by the FCC in response to these inquiries has validated our concerns with FCC management and process. One area of particular and ongoing concern is the management of the FCC's largest subdivision – the Enforcement Bureau.

Congressional concern for Enforcement Bureau management is not new. Seven years ago the United States Government Accountability Office (GAO) issued a report in response to the committee's request that it take a comprehensive look at Enforcement Bureau management.¹ That report concluded that the FCC's Enforcement Bureau had "not set measurable enforcement goals, developed a well-defined enforcement strategy, or established performance measures that are linked to the enforcement goals."² Notably, GAO concluded that "[w]ithout key management tools, FCC may have difficulty fully assuring Congress and other stakeholders that it is meeting

¹ United States Government Accountability Office, Report to the Chairman, Subcommittee on Telecommunications and the Internet, Committee on Energy and Commerce, House of Representatives, *FCC Has Made Some Progress in the Management of Its Enforcement Program but Faces Limitations, and Additional Actions Are Needed*, GAO 08-125, February 2008 (GAO Report).

its enforcement mission of protecting the consumer, ensuring public safety, and encouraging competition.”³

GAO made specific recommendations as to how the FCC could improve the effectiveness of the Enforcement Bureau. Among those recommendations, that the Chairman of the FCC:

improve how the FCC collects and analyzes data on complaints received, investigations conducted, and enforcement actions taken to help it better manage and understand the outcomes and net results of enforcement efforts and provide Congress and stakeholders with timely and accurate information that can be used to hold FCC accountable for accomplishing its enforcement mission under the Act; and,

develop and implement performance management practices for the Enforcement Bureau, such as a well-defined strategy that includes specific goals and performance measures, in order to assess the effectiveness of the FCC’s enforcement program.⁴

As part of its oversight of FCC processes and management, the committee sought information regarding the commission’s success in fulfilling its strategic goals and meeting its performance commitments in a June 4, 2014 letter.⁵ Notwithstanding GAO’s recommendations, it appears from commission responses and staff briefings that in the intervening years no consistent metrics – and at times, none whatsoever – were in place for the Enforcement Bureau. Based on information provided by the FCC, the Enforcement Bureau began in 2009 to assess its performance on the basis of the total number and monetary value of enforcement actions from year-to-year rather than implement GAO’s recommendation to develop and implement performance management practices. And while information provided to the committee suggests that the bureau’s operations and workflow have improved as a result of better data management, the Chairman’s testimony before the committee appears to confirm that the bureau continues to assess its performance on output, *e.g.*, the number and monetary value of enforcement actions.⁶ This is the same approach that GAO observed was insufficient to determine a broader perspective of the FCC’s enforcement program results.⁷ A recent statement by the Chairman’s

² *Id.* at 4.

³ *Id.*

⁴ *Id.* at 5.

⁵ See *Letter from the Honorable Greg Walden, Chairman, Subcommittee on Communications and Technology, Committee on Energy and Commerce, United States House of Representatives and the Honorable Tim Murphy, Chairman, Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, United States House of Representatives to the Honorable Tom Wheeler, Chairman, Federal Communications Commission*, June 4, 2014.

⁶ See Statement of FCC Chairman Tom Wheeler Before the Subcommittee on Communications and Technology, Committee on Energy and Commerce U.S. House of Representatives Hearing on “FCC Reauthorization: Improving Commission Transparency” April 30, 2015.

⁷ See GAO Report at 4, 25-26, 31.

spokesperson highlighting the monetary value of proposed penalties as the sole measure of the program's effectiveness suggests this management approach continues.⁸

Based on the few outward indices of the bureau's performance, GAO's conclusion that "[w]ithout key management tools, FCC may have difficulty fully assuring Congress and other stakeholders that it is meeting its enforcement mission of protecting the consumer, ensuring public safety, and encouraging competition" may be the reality at the commission.⁹ For example, according to the FCC's data the backlog of consumer complaints alleging violations of the Telephone Consumer Protection Act (TCPA), a core element of the FCC's consumer privacy mandate, has grown to over 1,000,000 since 2010 yet the number of citations issued against violators has fallen precipitously from 261 in Fiscal Year 2009 to just 4 in 2013 (the latest fiscal year data provided by the FCC to the committee). Based on the information known about the FCC's TCPA enforcement, it would appear that the bureau fails by even the FCC's existing output- and collection-based approach. And while the FCC has represented that it engages in an analysis of these complaints to identify and hold accountable the most egregious violators of the rules, the specifics of this analysis are opaque and its effectiveness unknown.

The execution of its consumer privacy mandate through enforcement of the TCPA rules is not the only area where the bureau's performance appears to be adrift. It had been reported that the number of enforcement actions against pirate radio operators is the lowest it has been since 2005 – less than 200 in 2014 and it is the first time since 2009 that less than \$100,000 in penalties were levied.¹⁰ Although the Chairman has reaffirmed the agency's commitment to take action against pirate radio operators in the face of such reports, what remains unexplained is why a downturn in enforcement in this area occurred in the first instance. We are also concerned as to what role, if any, the apparent absence of a well-defined strategy that includes specific goals and performance measures has played in this downturn.

Finally, under recent commission action, eleven of the Enforcement Bureau's 24 field offices have been slated for closure. According to information provided to the committee, the field offices accounted for approximately 84% of the enforcement actions taken in Fiscal Years 2010-2013. In the absence of additional performance metrics as recommended by GAO, it will be difficult to determine whether the benefits claimed and assurances made by FCC leadership with regard to the restructuring will indeed be realized.

In light of these observations, we request that GAO take a comprehensive look at the management of the FCC's Enforcement Bureau. Among other things, we request that GAO consider the following questions:

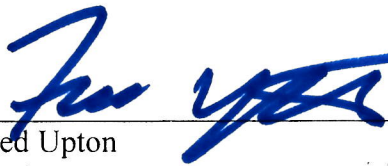
⁸ See Remarks of Gigi B. Sohn on Consumer Protection, <https://www.fcc.gov/document/remarks-gigi-b-sohn-consumer-protection>

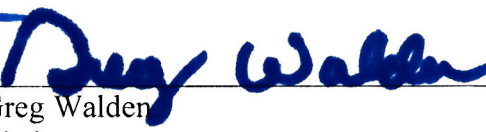
⁹ See GAO Report at 4.

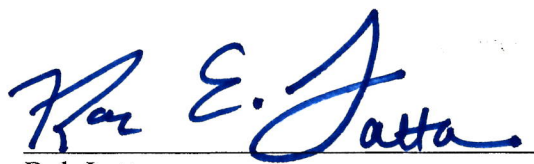
¹⁰ <http://www.radiosurvivor.com/2015/02/24/fcc-enforcement-pirate-radio-lowest-since-2005>.

1. Has the FCC implemented performance measures and performance goals consistent with GAO's 2008 recommendations? If not, how does the FCC measure the effectiveness of the enforcement program?
2. In the intervening seven years, would GAO recommend additional or revised recommendations to the FCC in effectively tracking the effectiveness of the FCC enforcement program?
3. Is the FCC's Enforcement Bureau meeting its mission of protecting the consumer, ensuring public safety, and encouraging competition? What changes should be made to improve performance to ensure that consumers are being protected and FCC leadership is accountable?
4. The FCC has invested millions of dollars in IT improvements in the Enforcement Bureau and the Consumer & Government Affairs Bureau since 2007. How much has the FCC spent on these improvements? Have these improvements lead to an improved enforcement program at the FCC to the benefit of consumers and other stakeholders?

Sincerely,


Fred Upton
Chairman


Greg Walden
Chairman
Subcommittee on Communications and
Technology


Bob Latta
Vice Chairman
Subcommittee on Communications and
Technology

cc: The Honorable Frank J. Pallone, Jr., Ranking Member

The Honorable Anna G. Eshoo, Ranking Member
Subcommittee on Communications and Technology